IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

OP.No. 13688 of 1996(D)

PETITIONER:

M/S. BHARAT PETROLEUM CORPORATION LTD., A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT BALLARD ESTATE, 4 & 6, KARIMBHOI BUILDING, BOMBAY AND INSTALLATION AT IRIMPANAM, COCHIN 682 309, REPRESENTED BY ITS SENIOR INSTALLATION MANAGER SHRI VIMAL KUMAR BHARADWAJ.

BY ADV. SRI.A.M.SHAFFIQUE

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**
2. **SPECIAL TAHSILDAR (LAND ACQUISITION), ERNAKULAM.**
3. **SRI. KRISHNAN, S/O. IKKANDAN, CHIRAKKAL, IRIMPANAM (DIED).**
4. **THE SUBORDINATE JUDGE'S COURT, ERNAKAULAM.**

ADDL. 5. SMT. BHARGAVI, AGED 73 YEARS, W/O. LATE KRISHNAN, CHIRAKKAL VEEDU, EROOR NORTH P.O., NADAMA VILLAGE.

ADDL. 6. SHRI CHANDRAHASAN, AGED 48 YEARS, S/O. LATE KRISHNAN, CHIRAKKAL VEEDU, EROOR NORTH P.O., NADAMA VILLAGE.

OP NO.13688/96 D

ADDL. 7. SHRI MADANAN, AGED 47 YEARS, S/O. LATE KRISHNAN, CHIRAKKAL VEEDU, EROOR NORTH P.O., NADAMA VILLAGE.

R1, R2 & R4 BY GOVERNMENT PLEADER (SHRI M.P. SREEKRISHNA)

R3, AND R5 TO R7 BY ADV. SRI.S.SREEKUMAR (ADDITIONAL RESPONDENTS 5 TO 7 ARE IMPLEADED AS PER ORDER ON IA NO.13120/05 DATED 15.11.2007).

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.24088/96 IN OP 13688/96 D

DISMISSED

15.11.2007 **SD/= K. M. JOSEPH, JUDGE'S**

APPENDIX

PETITIONER' S EXHIBITS:

EXT.P1 **TRUE COPY OF THE AWARD NO.15/90 DATED 31.7.90.**

EXT.P2 **TRUE COPY OF THE NOTE TO AWARD NO.15/90 DATED 31.7.90.**

EXT.P3 **TRUE COPY OF NOTE TO AWARD NO.8/88.**

EXT.P4 **TRUE COPY OF THE JUDGMENT IN LAR 72/89.**

EXT.P5 **TRUE COPY OF THE DECREE IN LAR NO.121/91.**

EXT.P6 **TRUE COPY OF THE JUDGMENT IN LAR 121/91.**

EXT.P7 **TRUE COPY OF THE JUDGMENT IN L.A.A. NO.185/94.**

EXT.P8 **TRUE COPY OF THE ORDER IN CMP NO.777/94 IN LAA 185/94.**

EXT.P9 **TRUE COPY OF THE ORDER IN CMP NO.3231/94 IN LAA 185/94.**

EXT.P10 **TRUE COPY OF THE ORDER DT. 9.2.96 OF THE SUPREME COURT.**

EXT.P11 **TRUE COPY OF THE FAX MESSAGE DATED 11.6.1996.**

EXT.P12 **TRUE COPY OF THE COMPUTATION WORKED OUT OF THE DECREE AMOUNT AS PER L.A.R. NO.121/91.**

EXT.P13 **TRUE COPY OF THE DECREE AMOUNT COMPUTED AS PER ENHANCEMENT WORKED OUT AS PER L.A.R. NO.72/89.**

RESPONDENTS' EXHIBITS: NIL.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

O.P. NO. 13688 OF 1996 D

Dated this the 15th November, 2007

JUDGMENT

At the requisition of the petitioner, property belonging to the third respondent came to be acquired under a Notification on 26.10.1989. Ext.P2 is the Note of Award. It would show that the land value in respect of the property acquired from the third respondent is shown as Rs.6,900/= per Are. The third respondent made an application for reference under Section 18 of the Land Acquisition Act. It came to be decided by Ext.P6 Judgment. Therein, the land value is fixed at Rs. 16,679/= per Are. The State carried the matter in Appeal. But, as evident from Ext.P7, the application to condone the delay in filing the Appeal was rejected. Petitioner, thereupon, preferred a SLP before the Apex Court, but it came to be dismissed as evident from Ext.P10. Ext.P11 is a communication addressed by the Collector calling upon the petitioner to deposit a sum of Rs.3,48,529/87. Ext.P12 is a Statement showing the decree

amount as per LAR No.121/91, which is shown as Rs.1,87,978/17. According to petitioner, even if the amount were to be awarded in terms of LAR No.72/89, the amount payable by the petitioner would be shown as Rs.51,538/25. Petitioner challenges Exts.P5 and P6 and seeks a direction to the first respondent not to make any demand to the petitioner claiming any amount to satisfy the decree debt in terms of Exts.P5 and P6.

2. I heard the learned counsel appearing for the petitioner and also the learned Government Pleader. Learned counsel for petitioner would contend that this is a case where the requisitioning authority has to shoulder the financial burden in the matter of payment of compensation. The amount fixed by the Collector for the land in question is Rs.6,300/= per Are. He would submit that there was an earlier acquisition in the year 1986 on behalf of the petitioner Company. It is pointed out that the land involved in LAR No.72/89 fell in Category V to the Note of Award of the acquisition in 1986. The categorisation is

dry land with cartable road and water frontage. He would submit that this is comparable to the land of the third respondent which was acquired under the Notification of the year 1989. The claim of the third respondent was based on LAR No.72/89. The amount given as enhancement by the Reference Court in LAR No.72/89 was only Rs.3,040/= per Are. It is further pointed out that the Reference Court in the facts of this case has fixed the land value at Rs.16,679/= per Are, far in excess of the land value fixed even in LAR 72/89. He would submit that though the petitioner had challenged the decision of the High Court dismissing the application for condonation of delay unsuccessfully before the Apex Court, the petitioner Company being the requisitioning authority was a necessary party before the Court in the reference proceedings, as it could have pointed out the correct position. Counsel for petitioner, of course, submits that there is no other financial implication for the petitioner apart from the liability to satisfy the Award in question and based on this Award passed in favour of the third

respondent, petitioner will not be mulcted with any other liability in any other land acquisition case. He relied on the decision of a Division Bench of this Court in Steel Authority of India Ltd. v. State of Kerala (1995 (2) KLT 683) for the proposition that either the petitioner could have filed an Appeal by seeking condonation of delay or it is entitled to challenge the Award itself under Article 226 of the Constitution of India. Learned counsel appearing on behalf of the additional respondents who are none other than the legal representatives of the deceased third respondent who died pending the Writ Petition, would contend that the entire amount was paid. He would submit that execution is over and that having regard to the facts of this case, this Court may not interfere.

3. It is true that the petitioner ought to have been made a party. But, I cannot also close my eyes that the extent in this case is only 7.82 Ares. The claimant was declared entitled to a sum of 16.679/=. No doubt, the amount shown in the Award in LAR 72/89 would show that there is an enhancement of

Rs.3,040/=. That related to the acquisition in 1986. It is to be noted that on the basis of this Award, petitioner will not be called upon to pay the land value in any other case going by the submissions made by the learned counsel for petitioner. Therefore, the implication of the land value will be limited to less than eight Ares. Having regard to the totality of facts, I would think that I need not exercise my discretionary jurisdiction in this matter. Accordingly, the Writ Petition fails and it is dismissed.

K. M. JOSEPH, JUDGE

kbk.